

**IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JUM SOON LIM,]	
]	Immigration Case. No. 094 947 587
Petitioner,]	
]	
vs.]	CIVIL CASE NO. 08 CV 4863
]	
GLENN TRIVELINE,]	
Acting Field Office Director,]	Hon. Judge Conlon
U.S. Immigration and Customs]	
Enforcement, et al.,]	Magistrate Judge Brown
]	
Respondents.]	
]	

**PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Through the undersigned counsel, the petitioner JUM SOON LIM hereby moves this Honorable Court to temporarily enjoin the respondents from effectuating an administratively final expedited order of removal or deportation entered against her on September 18, 2006 while her underlying petition for habeas corpus review of the order is pending and unadjudicated before this Court. Ms. Lim is presently detained in the custody of the respondents.

I. History

On September 18, 2006 an expedited removal order under section 235(b)(1) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1225(b)(1), was entered against Ms. Lim by an officer of the Department of Homeland Security, U.S. Customs and Border Protection (CBP or the Department agency), at a U.S. land port-of-entry.

Exhibit 1 (copy of the I-860 Notice and Order of Expedited Removal). Unlike the common statutory removal procedures governing removal in the interior of the United States, an inadmissible or excludable “arriving alien” applicant for admission at a U.S. port-of-entry can be summarily deported without further review before an Immigration Judge or an administrative appeal, provided that she does not possess a credible or reasonable fear of return to her home country. *See generally* INA § 235, 8 U.S.C. § 1225 (expedited removal of an inadmissible arriving alien); *cf.* INA § 240, 8 U.S.C. § 1229a (removal proceedings before an Immigration Judge). On information and belief, notwithstanding the Department agency’s entry of the expedited removal order, the petitioner was simultaneously paroled into the United States under section 212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5), pursuant to an outstanding arrest warrant stemming from pending criminal charges and unresolved criminal proceedings in Cook County, Illinois. On February 6, 2007, the petitioner pleaded guilty and was found guilty for a failure to report an accident resulting in death or personal injury under Chapter 625 of the Illinois Compiled Statutes 5/11-401(b). She was thereafter sentenced to 5 years of incarceration.

Exhibit 2 (copy of the certified disposition). On or about July 24, 2008, Ms. Lim was released from state custody to the Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE or the Department agency) for removal. While the pertinent immigration statutes and regulations do not afford Ms. Lim with appellate review of the expedited removal order within an administrative tribunal, judicial review by way of a petition for habeas corpus is made available under INA § 242(e)(2), 8 U.S.C. § 1252(e)(2). Ms. Lim’s petition for a writ of habeas corpus is submitted with this Honorable Court concurrently with her motion for a temporary restraining order.

II. Standard of Review

In determining whether injunctive relief is warranted, the Court considers: (1) the likelihood of irreparable harm to the movant if relief is denied; (2) the likelihood of harm to the non-moving party if relief is granted; (3) the likelihood that the movant will prevail on the merits of his underlying petition for habeas corpus; and (4) the public interest. *See Lucacela v. INS*, 161 F.3d 1055 (7th Cir. 1998).

III. Jum Soon Lim Merits a Temporary Restraining Order to Prevent the Respondents from Deporting Her While She Seeks Judicial Review of the Expedited Removal Order.

The petitioner submits that she meets the third prong requirement of demonstrating a likelihood of prevailing on the merits of her habeas action provided that this Court adopts the reasoning and rationale of the District Court of the Eastern District of Michigan in *American-Arab Anti-Discrimination Comm. v. Ashcroft*, 272 F.Supp.2d (E.D. Mich. 2003) (hereinafter “AAADC”). In AAADC, the Federal District Court found that the government agency unlawfully vitiates a noncitizen’s due process rights when expedited removal procedures are instituted against him after such alien has been paroled into the country. In this respect, Ms. Lim is similarly situated with the AAADC petitioners in that her expedited removal was coupled with a parole into the interior of the United States. Thus, Ms. Lim requests this Court in habeas review to set aside or vacate her expedited removal order without prejudice to the respondents to initiate removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a before an Immigration Judge in which she is afford the full array of procedural safeguards and avenues to administrative appellate review concomitant with the statutory provisions governing section 240 removal proceedings.

Additionally, it is without question that the likelihood of harm to Ms. Lim is great as a deportation to South Korea would arguably strip her of habeas standing and this Court's jurisdiction to grant habeas relief. A deportation under the expedited removal statute carries with it a five-year bar to a visa admission into the United States. INA § 212(a)(9)(A)(i), 8 U.S.C. § 1182(a)(9)(A)(i). Conversely, the respondent's deportation objective will not be prejudiced should this Court grant injunctive relief. Presently, Ms. Lim remains detained in ICE custody without the legal right to a bond review before an Immigration Judge. *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1999) (an Immigration Judge has no authority over the apprehension, custody, and detention of arriving aliens and is therefore without authority to consider the bond request of an alien returning pursuant to a grant of advance parole). Thus, respondents will not be precluded from carrying out its deportation should Ms. Lim prove unsuccessful in her habeas challenge to the agency's expedited removal order.

IV. Conclusion

For the foregoing reasons, Ms. Lim respectfully requests this Court to enjoin the respondents from executing the administratively final expedited removal order entered against her while she seeks judicial review of the agency's order in habeas corpus proceedings. Ms. Lim hereby reserves her right to surreply any response to this motion. Respectfully submitted,

s/ David Cook

David Cook
Attorney for Jum Soon Lim

Date: August 26, 2008

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that in accordance with Fed. R. Civ. P. 5, L.R. 5.5, and the General Order on Electronic Case Filing (ECF), the PETITIONER'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION was served pursuant to the District Court's ECF system as to ECF filers on August 26, 2008, to the following ECF filers, or by regular mail to any non-ECF filers at this address:

Sheila McNulty
Spec. AUSA for USICE
219 S. Dearborn St., 5th Floor
Chicago, IL 60604
(312) 353-8788

s/ David Cook

David Cook
Kenneth Y. Geman and Associates
33 N. LaSalle St., Ste. 2300
Chicago, IL 60602
(312) 263-6114 phone
(312) 263-0104 fax
david@gemanimmigrationlaw.com

TABLE OF EXHIBITS

Exhibit 1: Form I-860 Notice and Order of Expedited Removal under Section 235(b)(1) of the Immigration and Nationality Act.

Exhibit 2: Certified Disposition of 625 ILCS 5/11-401(b).

EXHIBIT 1

Office of Detention and Removal Operations
U.S. Department of Homeland Security
101 West Congress Parkway
Chicago, Illinois 60605



**U.S. Immigration
and Customs
Enforcement**

Facsimile Transmission

TO: David Cook, Geman & Associates

FAX Number: 312-263-0104

FROM: C. Krznaric, DO

FAX Number:

DATE: 20 August 2008

NUMBER OF PAGES, INCLUDING COVER PAGE: 2

**Copy of Determination of Inadmissability & Order of Removal in re:
Jum Soon LIN (A94 947 587)**

of Justice

J Naturalization Service

Notice and Order of Expedited Removal

DETERMINATION OF INADMISSIBILITY

File No: 4094 947 517

Date: September 18, 2006

In the Matter of: JUM S. LIM

Pursuant to section 235(b)(1) of the Immigration and Nationality Act (Act), (8 U.S.C. 1225(b)(1)), the Immigration and Naturalization Service has determined that you are inadmissible to the United States under section(s) 212(a) (6)(C)(i); (6)(C)(ii); (7)(A)(i)(I); (7)(A)(i)(II); (7)(B)(i)(I); and/or (7)(B)(i)(II) of the Act, as amended, and therefore are subject to removal, in that:

- 1) On or about September 17, 2006, you applied for admission into the United States.
- 2) You verbally declared yourself to be a Lawful Permanent Resident of the United States.
- 3) You are a citizen and national of Korea.
- 4) You have no legal right to either enter, pass through, or remain in the United States.
- 5) You willfully misrepresented your true identity and are not in possession of a valid entry document as is required by the Act.

**THE BUTZAR
CAP OFFICER.**

Name and title of immigration officer (Print)

Signature of Implementation officer

**ORDER OF REMOVAL
UNDER SECTION 235(b)(1) OF THE ACT**

Based upon the determination set forth above and evidence presented during inspection or examination pursuant to section 235 of the Act, and by the authority contained in section 235(b)(1) of the Act, you are found to be inadmissible as charged and ordered removed from the United States.

~~SECRET~~ A. MURGA
SUPERVISORY CDR OFFICER

SUPERVISORY COUNSELOR

NAME AND TITLE OF INVESTIGATING OFFICER (P.D.H.)

Structure of immigration agreement

O. CHAMBERS
CBT CERT

Name and title of supervisor (Print)

Signature of supervisor, if unavailable

Check here if supervisory concurrence was obtained by telephone or other means (no supervisor on duty).

CERTIFICATE OF SERVICE

I personally served the original of this notice upon the above-named person on
(Date)

Signatures of immigration officer

EXHIBIT 2

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 05CR2690901

JUM

LIM

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

625-5/11-401(b) F FAILURE REPORT ACCIDENT/DEATH
The following disposition(s) was/were rendered before the Honorable Judge(s) :

11/22/05 IND/INFO-CLK OFFICE-PRES JUDGE 05CR2690901 ID# CR100880860	12/08/05 1701
12/08/05 TRANSFERRED TO SUBURBAN DIST BIEBEL, PAUL JR.	12/08/05 0200
12/08/05 DEFENDANT ON BOND CHAMBERS, TIMOTHY J.	00/00/00
12/08/05 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	01/04/06 0297
01/04/06 DEFENDANT ON BOND CHAMBERS, TIMOTHY J.	00/00/00
01/04/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	03/07/06 0297
03/07/06 DEFENDANT ON BOND CHAMBERS, TIMOTHY J.	00/00/00
03/07/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	04/07/06 0297
04/07/06 DEFENDANT ON BOND CHAMBERS, TIMOTHY J.	00/00/00
04/07/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	05/15/06 0297
05/15/06 DEFENDANT ON BOND CHAMBERS, TIMOTHY J.	00/00/00
05/15/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	06/21/06 0297
06/16/06 DEFENDANT ON BOND HOWARD, GARRITT E.	
06/16/06 CASE ADVANCED HOWARD, GARRITT E.	
06/16/06 MOTION DEFT - CONTINUANCE - MD HOWARD, GARRITT E.	06/30/06 0297

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 PEOPLE OF THE STATE OF ILLINOIS

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VS

NUMBER 05CR2690901

JUM

LIM

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
06/30/06 DEFENDANT ON BOND	00/00/00
CHAMBERS, TIMOTHY J.	
06/30/06 CONTINUANCE BY AGREEMENT	08/08/06 0297
CHAMBERS, TIMOTHY J.	
08/08/06 DEFENDANT ON BOND	00/00/00
CHAMBERS, TIMOTHY J.	
08/08/06 CONTINUANCE BY AGREEMENT	09/11/06 0297
CHAMBERS, TIMOTHY J.	
09/11/06 DEFENDANT ON BOND	00/00/00
CHAMBERS, TIMOTHY J.	
09/11/06 CONTINUANCE BY AGREEMENT	10/23/06 0297
CHAMBERS, TIMOTHY J.	
09/27/06 DEFENDANT NOT IN COURT	00/00/00
CHAMBERS, TIMOTHY J.	
09/27/06 NO BAIL	00/00/00
CHAMBERS, TIMOTHY J.	
09/27/06 PETITION FOR VOBB FILED	
CHAMBERS, TIMOTHY J.	
09/27/06 WARRANT OUTSTANDING	00/00/00
CHAMBERS, TIMOTHY J.	
09/28/06 WARRANT SENT TO POLICE AGENCY	00/00/00
09/28/06 WARR ORD, WARR ISSUED	
CHAMBERS, TIMOTHY J.	
10/03/06 DEFENDANT IN CUSTODY	00/00/00
CHAMBERS, TIMOTHY J.	
10/03/06 DEFENDANT NOT IN COURT	00/00/00
CHAMBERS, TIMOTHY J.	
10/03/06 PREVIOUS ORDER TO STAND	00/00/00
CHAMBERS, TIMOTHY J.	
10/23/06 REINSTATEMENT	CALL 00/00/00
ORR, MARCIA B.	
10/23/06 CONTINUANCE BY AGREEMENT	11/13/06
ORR, MARCIA B.	
10/25/06 RECALL/EXEC SENT TO POLICE AGY	00/00/00
10/28/06 WARR RETURNED, EXECUTED, FILED	00/00/00
ZAFIRATOS JAMES ALBERT	
10/28/06 BOND TO STAND	00/00/00
ZAFIRATOS JAMES ALBERT	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 PEOPLE OF THE STATE OF ILLINOIS

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VS NUMBER 05CR2690901

JUM LIM

CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

10/28/06 CONTINUANCE BY ORDER OF COURT	10/30/06 0297
ZAFIRATOS JAMES ALBERT	00/00/00
10/28/06 SPECIAL ORDER FROM PRINTOUT - NO FILE IN COURT ZAFIRATOS JAMES ALBERT	00/00/00
10/30/06 RECALL/EXEC SENT TO POLICE AGY	00/00/00
10/30/06 DEFENDANT IN CUSTODY SUTKER-DERMER, SHELLEY	00/00/00
10/30/06 PRISONER DATA SHEET TO ISSUE SUTKER-DERMER, SHELLEY	00/00/00
10/30/06 WARR RETURNED, EXECUTED, FILED SUTKER-DERMER, SHELLEY	00/00/00
10/30/06 BOND TO STAND SUTKER-DERMER, SHELLEY	00/00/00
10/30/06 CONTINUANCE BY ORDER OF COURT SUTKER-DERMER, SHELLEY	10/31/06 0297
10/30/06 RECALL/EXEC SENT TO POLICE AGY	00/00/00
10/31/06 DEFENDANT IN CUSTODY CHAMBERS, TIMOTHY J.	00/00/00
10/31/06 PRISONER DATA SHEET TO ISSUE CHAMBERS, TIMOTHY J.	00/00/00
10/31/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	11/27/06 0297
11/27/06 DEFENDANT IN CUSTODY CHAMBERS, TIMOTHY J.	00/00/00
11/27/06 PRISONER DATA SHEET TO ISSUE CHAMBERS, TIMOTHY J.	00/00/00
11/27/06 MOTION DEFT - CONTINUANCE - MD CHAMBERS, TIMOTHY J.	12/05/06 0297
12/05/06 DEFENDANT IN CUSTODY CHAMBERS, TIMOTHY J.	00/00/00
12/05/06 PRISONER DATA SHEET TO ISSUE CHAMBERS, TIMOTHY J.	00/00/00
12/05/06 CONTINUANCE BY AGREEMENT CHAMBERS, TIMOTHY J.	01/26/07 0297
01/26/07 DEFENDANT IN CUSTODY CHAMBERS, TIMOTHY J.	00/00/00

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 PEOPLE OF THE STATE OF ILLINOIS

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VS

NUMBER 05CR2690901

JUM LIM

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION	00/00/00	
01/26/07 PRISONER DATA SHEET TO ISSUE	00/00/00	
CHAMBERS, TIMOTHY J.		
01/26/07 MOTION DEFT - CONTINUANCE - MD	02/06/07 0297	
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 DEFENDANT IN CUSTODY		
CHAMBERS, TIMOTHY J.	CALL 00/00/00	
02/06/07 PLEA OF GUILTY		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 JURY WAIVED		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 PRESENTENCE INVESTIGATION WAIV		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 FINDING OF GUILTY	CALL 00/00/00	
CHAMBERS, TIMOTHY J.		
02/06/07 DEF SENTENCED ILLINOIS DOC	CALL 00/00/00	
5 YRS		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 CREDIT DEFENDANT FOR TIME SERV		
103 DYS		
CHAMBERS, TIMOTHY J.	00/00/00	\$ 560
02/06/07 FINES COSTS FEES PER DRFT ORD		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 BAIL REVOKED		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 DEF ADVISED OF RIGHT TO APPEAL		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 LET MITTIMUS ISSUE/MITT TO ISS		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 BLOOD TEST ORDERED	00/00/00 F	1
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 WARRANT QUASHED		
CHAMBERS, TIMOTHY J.	00/00/00	
02/06/07 CHANGE PRIORITY STATUS	M 00/00/00	
CHAMBERS, TIMOTHY J.	00/00/00	
02/07/07 RECALL/EXEC SENT TO POLICE AGY	00/00/00	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
PEOPLE OF THE STATE OF ILLINOIS

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VS NUMBER 05CR2690901

JUM LIM

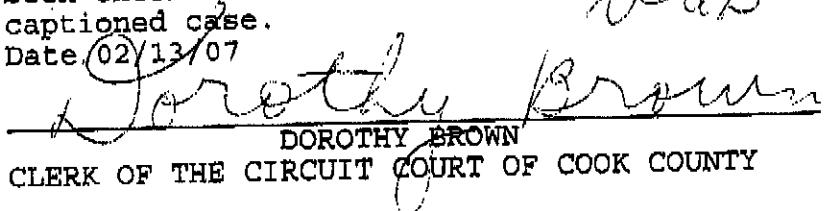
CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

I hereby certify that the foregoing has
been entered of record on the above
captioned case.

Date 02/13/07


DOROTHY BROWN
CLERK OF THE CIRCUIT COURT OF COOK COUNTY